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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

EMANUEL B. CAUDILL,

Defendant and Appellant.

D074214

(Super. Ct. No. SCD270001)

APPEAL from a judgment of the Superior Court of San Diego County, Laura J. Birkmeyer, Judge. Appeal dismissed.

Jane L. Gilbert, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, Eric A. Swenson and Junichi P. Semitsu, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found Emanuel B. Caudill guilty of grand theft (Pen. Code,¹ § 487, subd. (a).) The jury also found true the enhancement, under former section 12022.6, subdivision (a)(1), that Caudill took property worth more than \$65,000. The court suspended imposition of Caudill's sentence, granting him probation for five years, imposing various terms and conditions including one year in county jail.

Caudill appeals, arguing his section 12022.6, subdivision (a)(1) enhancement should be stricken because the statute authorizing that enhancement expired on its own terms on January 1, 2018, before he was convicted and sentenced. The People counter that this issue is not yet ripe because the court did not impose any sentence on Caudill. In the alternative, the People maintain that the court did not err when it did not strike the enhancement under section 12022.6, subdivision (a)(1) because Caudill committed his offense before the expiration of the statute and the statute's sunset clause should not be applied retroactively.

We agree with the People that the issue presented here is not yet ripe. The trial court did not impose the section 12022.6 enhancement. Further, if probation is revoked and the enhancement is then imposed, Caudill may appeal the enhancement at that time. Accordingly, we dismiss the appeal.

¹ Statutory references are to the Penal Code unless otherwise specified.

FACTUAL AND PROCEDURAL BACKGROUND

Facts

The underlying facts of Caudill's offense are not critical to our analysis here. We briefly discuss the facts to provide some context. The parties agree on the relevant factual background; thus, for the sake of convenience, we adopt the facts as set forth in the opening brief.

On August 2, 2016, in his capacity as a messenger for Sectran,² Caudill arrived at The Check Cashing Place (Store #6) to pick up money for transport to the bank. Sectran picked up \$190,000 from The Check Cashing Place, three bags containing \$30,000 and two bags containing \$50,000.

On August 3, 2016, Caudill texted his supervisor at Sectran that he was quitting his job. A day or two after quitting his job at Sectran, Caudill moved to Cabo San Lucas, Mexico.

At the end of August 2016 when the check cashing accounts were being reconciled, the accountant assistant noticed that the bank did not credit \$100,000 of the \$190,000 that Caudill picked up at The Check Cashing Place on August 2nd. Upon further investigation, Sectran discovered that two bags of \$50,000, which were picked up from The Check Cashing Place, were never delivered to the bank. This \$100,000 was never found.

² Sectran is an armored transport company that picks up currency from various businesses and brings it back to their office for counting before transporting the currency to the bank.

Sentencing Hearing

On April 5, 2018, the jury found Caudill guilty of grand theft and found true the enhancement under section 12022.6. On June 19, 2018, Caudill's trial counsel argued the enhancement under former section 12022.6, subdivision (a)(1) did not apply because the statute expired on January 1, 2018. The prosecutor disagreed, arguing that Caudill committed grand theft while section 12022.6 was in effect. As such, the enhancement was appropriate.

The court asked the prosecutor if she had any case law to support her position. She responded in the negative, explaining "[f]rom what I can understand and from what my supervisors and I have looked at as far as 12022.6(a) is concerned, the fact that it sunset in 2018 should not affect the fact that the crime was committed while the law was still valid."

Ultimately, the court suspended imposition of the sentence in this matter, and therefore, did not address the application of former section 12022.6, subdivision (a)(1) to Caudill.

DISCUSSION

Former section 12022.6 was an independent enhancement statute that applied when any person took any property in the commission of a felony, with the intent to cause that taking. (*People v. Lai* (2006) 138 Cal.App.4th 1227, 1238; former § 12022.6, subd. (a).) The imposition of an additional prison term for aggregate takings operated on a sliding scale. (*Lai*, at p. 1238.) At the time Caudill committed his crime, former section 12022.6 required the trial court to impose an additional and consecutive sentence

enhancement on a defendant as follows: a one-year term for a property loss exceeding \$65,000; two years for a loss greater than \$200,000; three years for a loss greater than \$1.3 million; or four years for a loss exceeding \$3.2 million. (Former § 12022.6, subd. (a)(1)-(4).)

However, on January 1, 2018, section 12022.6 was repealed by its own terms: "It is the intent of the Legislature that the provisions of this section be reviewed within 10 years to consider the effects of inflation on the additional terms imposed. For that reason this section shall remain in effect only until January 1, 2018, and as of that date is repealed unless a later enacted statute, which is enacted before January 1, 2018, deletes or extends that date." (§ 12022.6, subd. (f).) The statute contained no saving clause limiting the scope of the repeal. The Legislature did not enact a new version of section 12022.6 before January 1, 2018, and at present, it has not yet enacted a new version.

As an initial matter, the People contend the issue is not yet ripe because the court did not impose Caudill's prison sentence, which included the section 12022.6 enhancement. We agree.

"The ripeness requirement, a branch of the doctrine of justiciability, prevents courts from issuing purely advisory opinions. [Citation.] It is rooted in the fundamental concept that the proper role of the judiciary does not extend to the resolution of abstract differences of legal opinion." (*Pacific Legal Foundation v. California Coastal Com.* (1982) 33 Cal.3d 158, 170.) " '[A] controversy is "ripe" when it has reached . . . the point that the facts have sufficiently congealed to permit an intelligent and useful decision to be made.' " (*Vandermost v. Bowen* (2012) 53 Cal.4th 421, 452.) "The legal issues posed

must be framed with sufficient concreteness and immediacy so that the court can render a conclusive and definitive judgment rather than a purely advisory opinion based on hypothetical facts or speculative future events." (*Hayward Area Planning Assn. v. Alameda County Transportation Authority* (1999) 72 Cal.App.4th 95, 102 (*Hayward Area Planning*).)

Because a section 12022.6 sentencing enhancement was never imposed on Caudill, there is no disputed holding below, and Caudill's claim is unripe. Moreover, it is not clear, on the record before us, that the court will ever impose the enhancement on Caudill. Thus, any decision by this court regarding whether a section 12022.6 enhancement could have been lawfully imposed on Caudill would constitute "a purely advisory opinion based on hypothetical facts or speculative future events." (*Hayward Area Planning, supra*, 72 Cal.App.4th at p. 102.) Consequently, we dismiss the instant appeal.

DISPOSITION

The appeal is dismissed without prejudice to Caudill bringing a future challenge if the section 12022.6 enhancement is actually imposed.

HUFFMAN, Acting P. J.

WE CONCUR:

HALLER, J.

IRION, J.